SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

No. 263

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

FLORENCE PRINTING COMPANY, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

and

CHARLESTON TYPOGRAPHICAL UNION No. 43,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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MEMORANDUM IN OPPOSITION FOR CHARLESTON TYPOGRAPHICAL UNION NO. 43

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

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Charleston Typographical Union No. 43, the charging party before the National Labor Relations Board, and intervenor in the Court of Appeals, joins the Board in urging that certiorari be denied in this

case. We shall not reiterate the discussion in the Board's Brief in Opposition which shows that the issues tendered by the Petition are purely evidentiary and therefore do not warrant this Court's consideration. However, at one point of its Petition (p. 7), and contrary to the language of the Questions Presented themselves and the main argument in the body of the Petition (pp. 7-27), the company claims that certiorari should be granted to resolve a conflict among the circuits regarding the procedures to be followed in back-pay proceedings. It may clear the air, therefore, to point out that the contention is not open to the company, because 1) it was not properly raised before the Board, and 2) it was deliberately abandoned in the Court of Appeals.

1. As the Court of Appeals said:

> "At no time did petitioner, through its counsel, evince any desire to examine any employee, except Bass and Johnson, as to interim earnings. Each of the other employees had been reinstated by petitioner prior to the hearing before the examiner, so that petitioner was well aware of the whereabouts of those not present at the hearing." (Pet. p. 15a)

Thus, quite aside from the requirements of § 10(e) of the Act, which the Court below assumed were met, the company was disqualified from raising this issue by the principle "that orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts." *United States* v. *Tucker Truck Lines*, 344 U.S. 33, 37.

2. In its reply brief in the Court of Appeals (pp. 3-4) the company argued:

> The Company cited and quoted from those cases for the expressly limited purpose of supporting the logic of the position which the Company has maintained throughout this case. But, as pointed out above, the defense which the Board attacks as being unsound and also attacks as being now unavailable to the Company, namely, the principle of the *Mastro Plastics* and *Rice Lake Creamery* cases, is not the defense which the Company relies on in the present case. Thus the Board sets up a straw man and busies itself trying to knock it down.
>
> At least one-third of the Board's brief is devoted to its efforts to get the Court to disapprove *Mastro Plastics* and *Rice Lake Creamery,* even though that is precisely what the Supreme Court refused to do when it denied the Board's petition for certiorari in *Mastro Plastics* case.[*] There is no good reason for involving this Court in such a controversy as that, and no useful purpose will be served by it.
>
> The main point and crux of the Company's appeal is that the Board has erroneously ignored pertinent and fundamental *evidence,* it has wrongfully failed to resolve differences or conflicts in relevant *evidence,* and it has failed to draw inferences obviously required by *evidence*—all in dereliction of its duty as the exclusive fact finder. (Emphasis in original.)

Thus, the company itself has recognized that the case raises only evidentiary issues. These were de-

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* A petition for certiorari was filed by Mastro Plastics, raising other issues, and was denied by this Court. 384 U.S. 972. The Company erroneously attributed that Petition to the Board.

cided against the company by the Court of Appeals and, of course, merit no further review here. *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498.

For these reasons and those stated in the brief in opposition of the National Labor Relations Board, the petition for certiorari should be denied.

Respectfully submitted,

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